

# Federal Labour Court





## **The Federal Labour Court**

Erfurt 2014

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Federal Labour Court  
Kirstin Weigel  
Nürnberg Luftbild, Hajo Dietz

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Hugo-Preuß-Platz 1, 99084 Erfurt, Germany

## Foreword



President of the Federal Labour Court  
Ingrid Schmidt

In a democratic and social constitutional state, citizens expect the legal order to be maintained and legal peace to be preserved. In order to achieve this, independent courts must grant legal protection to all citizens. For the area of employment, this task is carried out by labour jurisdiction. The procedural basis of labour jurisdiction is the Labour Courts Act, which is based on the Code of Civil Procedure. However, its specific procedural principles and the types of legal procedures were determined according to the particularities of employment. For example, it is especially important for employees and employers to have legal certainty and clarity as soon as possible.

In labour jurisdiction, the Federal Labour Court is of great importance. As a supreme federal court of justice, the court has to promote the consistency of court decisions in the area of labour law and develop the law where necessary. In the more than five decades of its existence, the Federal Labour Court has always been perceived by the public as being a constitutive force. Not least because of this, there is a great demand on information on the basic principles and conditions of its work.

There is also a general interest in such information coming from foreign guests of the Federal Labour Court. They visit the Federal Labour Court in order to gain an insight into the work of a supreme federal court of justice and learn about the procedural framework of labour jurisdiction in Germany. This brochure - published in German, English and French - is designed to meet that demand on information.

Erfurt, June 2014

The President  
of the Federal Labour Court

*Schmidt*

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## **I. Position of the Federal Labour Court in the Court System of the Federal Republic of Germany**

The **Federal Labour Court**, based in Erfurt, is the highest court in Germany's labour court system.

### **1. Basic Principles of German Organisation of Justice**

The Federal Republic of Germany is a social and democratic federal state. It is made up of 16 constituent states which are called Länder. According to Articles 20 and 30 of the Basic Law, the exercise of state powers and the discharge of state functions is a matter for the Länder. The division of legislative, executive and judicial authority between the Federation and the Länder is governed by the provisions of the Basic Law. The judicial power is exercised by the Federal Constitutional Court, by the federal courts provided for in the Basic Law, and by the courts of the Länder (Article 92 of the Basic Law).

A characteristic of the German judicial system is the division of judicial authority into several **special jurisdictions**. According to the constitution, there are five special jurisdictions of equal status. These are ordinary jurisdiction (i.e. civil and criminal jurisdiction), administrative jurisdiction, fiscal jurisdiction, social jurisdiction and **labour jurisdiction** (Article 95 of the Basic Law). Each special jurisdiction is independent and has various stages of appeal. Labour jurisdiction is a **three-tier system** consisting of first-instance **Labour Courts**, second-instance **Land Labour Courts** and the final-instance **Federal Labour Court**.

The **Federal Constitutional Court** has a special position in the organisation of justice in the Federal Republic of Germany. It is a federal court of justice independent of all other

constitutional organs. Its exclusive task is to ensure compliance with the Basic Law. For example, it rules on the constitutionality of laws on application of the Federal Government, of a Land government, or of one third of the Members of the Bundestag (Article 93 of the Basic Law). If a court concludes that a law on whose validity its decision depends is unconstitutional, the proceedings shall be stayed, and a decision shall be obtained from the Federal Constitutional Court (Article 100 of the Basic Law). Additionally, the Federal Constitutional Court rules on constitutional complaints, which may be filed by any person alleging that one of his basic rights has been infringed by public authority. Constitutional complaints may also be filed against court judgments after having gone through all stages of appeal in the relevant special jurisdiction. In addition to the Federal Constitutional Court, there are several Land Constitutional Courts. They rule, for example, on the compatibility of Land law and the relevant Land constitution.

<b>Federal Constitutional Court</b>	<b>Highest Federal Courts</b>				
	<b>Federal Court of Justice</b>	<b>Federal Administrative Court</b>	<b>Federal Labour Court</b>	<b>Federal Finance Court</b>	<b>Federal Social Court</b>
	Civil and Criminal jurisdiction	Administrative jurisdiction	Labour jurisdiction	Fiscal jurisdiction	Social jurisdiction
	<b>S t a g e s o f a p p e a l</b> (Courts of the Länder)				
<b>Constitutional Courts of the Länder</b>	Higher Regional Court	Land Administrative Court	Land Labour Court	Finance Court	Land Social Court
	Regional Court	Administrative Court	Labour Court		Social Court
	Local Court				



## 2. Jurisdiction in Employment Matters

Labour jurisdiction covers all **civil proceedings** in the area of employment law. Civil proceedings deal with disputes about legal relations and their effects in civil law, as opposed to public law. Characteristically, the parties to such a dispute are of equal status. Against this background, labour jurisdiction mainly covers all legal disputes between employees and employers. This includes disputes between employees and public sector employers, but not those between civil servants and their employers. Disputes arising from the civil service relationship are in the jurisdiction of Administrative Courts. Disputes arising from the employment relationship may relate to remuneration, annual leave or sick pay. Labour jurisdiction also hears disputes about the existence or non-existence of a contract of employment, including those relating to unfair dismissal claims, and disputes about inadmissible action in the employment relationship and employment papers. Additionally, labour jurisdiction covers all civil proceedings relating to disputes of rights between the parties to a collective agreement or between one party to a collective agreement and third parties arising from collective agreements. This includes the conclusion, validity and scope of a collective agreement as well as all claims arising from its content and implementation. It also includes disputes arising from inadmissible action for the purposes of industrial action or in connection with questions of freedom of association and the right of activity of an employer or employee representative.

Furthermore, labour jurisdiction hears disputes between employers and elected employee representatives arising from co-determination issues at establishment level such as the scope of works council participation rights. According to law, works councils, which incidentally are not trade union bodies, have certain participation and co-determination rights in companies. Labour jurisdiction also deals with co-determination issues above

establishment level on the supervisory board of a company and matters relating to the capacity to conclude collective agreements and collective bargaining jurisdiction of trade unions and employers' organisations. In Germany, there is no governmental procedure for accrediting trade unions and adjudging them to possess the capacity to conclude collective agreements. However, the Federal Labour Court has established minimum criteria which an association of employees must fulfil in order to possess the capacity to conclude collective agreements. It must be freely formed, it shall not be subject to influence from the opposing side and must be independent. It must possess a measure of social power in terms of its organisational strength and its ability to exert pressure on its social counterpart. The employee associations have a special procedure before the labour courts available to them for declaratory judgments on the capacity to conclude collective agreements.

Labour courts exercise an **exclusive** jurisdiction in employment matters. Other courts are not competent in these matters and it is not possible to transfer jurisdiction from labour courts to other courts by agreement of the parties.

### **3. History of Labour Jurisdiction**

The establishment of an independent labour jurisdiction under constitutional law in the Federal Republic of Germany is the result of a continuous development of legal policy. Already at the beginning of the 19<sup>th</sup> century, employers were interested in establishing an institution that could resolve labour disputes taking into account the requirements of business practice. This gave the impetus for establishing the first independent factory and trade courts. In 1890, for the first time, municipalities with a population of more than 20,000 were required by law to establish trade courts in addition to ordinary courts. Trade court

panels were made up of one elected judge and two lay members representing the employers' and employees' sides respectively. The principle of equal participation of both parties to an employment relationship in decision making is still today a characteristic of labour jurisdiction. When the Labour Courts Act of 1926 came into effect, labour courts had exclusive jurisdiction for employment matters. However, the Labour Courts Act only provided for the establishment of first-instance labour courts. The appellate courts continued to be part of ordinary jurisdiction. Labour jurisdiction was first completely independent from ordinary jurisdiction in 1953 when a new Labour Courts Act was introduced implementing the establishment of an independent labour jurisdiction as required by the Basic Law of 1949. The Federal Labour Court was initially located in Kassel. After the reunification of Germany, the Federal Labour Court was relocated to Erfurt in 1999 according to a decision of the German Bundestag.

## **II. Labour Jurisdiction**

### **1. Stages of Appeal**

The three-tier structure of the labour courts system was established to ensure an effective legal protection for all citizens. This structure provides for judgments of a court to be reviewed by a higher court. Appeals against judgments of Labour Courts can be lodged with the relevant Land Labour Court. Appeals on points of law can be lodged against Land Labour Court judgments. These appeals are heard by the Federal Labour Court.

## **FEDERAL LABOUR COURT**



(Appeal on a Point of Law)

## **LAND LABOUR COURTS**



(Appeal)

## **LABOUR COURTS**

Labour Courts are first-instance courts. It is for them to determine the facts of the case based on the evidence before them and to issue a judgment according to law.

At appeal, the case is reheard by the second-instance Land Labour Court both on points of law and the facts of the case. If required, witnesses are (re)heard and documents are reviewed. However, there are restrictions in providing new evidence to the case.

Finally, at third instance, the Federal Labour Court may hear appeals, on points of law only, against judgments given by Land Labour Courts.

## **2. Court Locations**

Labour Courts and Land Labour Courts are courts of the Länder. At present<sup>1</sup>, there is a total of 111 Labour Courts in Germany. Some of them hold court sessions in rural areas in order to alleviate travelling for the citizens.

In Berlin and Brandenburg, a common Land Labour Court has been established since 2007. It is based in Berlin. All other Länder have (at least) one Land Labour Court. With the exception of Hesse, Mecklenburg-Western Pomerania, Saxony and Saxony-Anhalt these are based in the state capital.

The Länder with the largest population North Rhine-Westphalia and Bavaria have three<sup>2</sup> or two<sup>3</sup> Land Labour Courts respectively.

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<sup>1</sup> as of 2th April 2014, Source: Federal Ministry of Justice, „Gerichte des Bundes und der Länder“.

<sup>2</sup> in Düsseldorf, Hamm and Cologne.

<sup>3</sup> in Munich and Nuremberg.



### 3. Labour Court Panels

Labour jurisdiction is carried out by panels of several members. At Labour Courts and Land Labour Courts these are called **Chambers**, at the Federal Labour Court they are called **Senates**. Chambers consist of one judge and two lay members representing the employers' and employees' sides respectively. Senates at the Federal Labour Court are made up of three judges and two lay members representing the employers' and employees' sides respectively.



3rd instance  
Federal Labour Court



2nd instance  
Land Labour Court



1st instance  
Labour Court

Judges are appointed for life to ensure their independence. At the time of appointment they must be qualified to hold judicial office. In Germany, whoever concludes his legal studies at a university by taking the first examination and completes a subsequent period of preparatory training by taking the second state examination is qualified to hold judicial office (Section 5, 5a and 5b of the German Judges Act).



Lay members at Labour Courts and Land Labour Courts are appointed by the highest competent authority of the Land in question on the recommendation of employers' and employees' associations. The appointment is for a term of five years, but re-appointment is possible. Lay members are not required to hold specific qualifications, but they should have worked in the capacity of an employer or an employee respectively for a certain time. Their main function is to contribute with their business experience and expertise to the decision of the court. Lay members are reimbursed for their expenses, but do not receive any remuneration.

Judges and lay members have equal voting rights. In first and second instance proceedings, it is even possible for the lay members to outvote the judge during their (secret) deliberations. This strong influence of lay members is a specific characteristic of labour jurisdiction, which differs greatly from ordinary civil jurisdiction in that respect.

In the year 2012<sup>4</sup>, a total of 983 judges – among them 370 female judges – worked in labour jurisdiction. In comparison to ordinary jurisdiction, labour jurisdiction is a small judicial branch. In the year 2012, a total of 14,903 judges – among them 6,105 female judges – worked in ordinary jurisdiction.

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<sup>4</sup> Source: Federal Statistical Office 2014 "Gerichte und Personal".

#### **4. Statistics on Labour Court Applications**

The Labour Court procedure allows a quick and efficient solution of labour disputes. It is transparent and focused on the needs of the public. Its efficiency can be demonstrated by the statistics of 2012<sup>5</sup>: More than 85 % of the 403,550 applications to Labour Courts were completed within 6 months. Only 4 % of all cases were challenged by means of appeal. 62 % of those appeal court proceedings were completed within 6 months. In 2012, there were 4,082 applications to the Federal Labour Court. It should be mentioned that only 2 % of all employees go to court to ascertain their rights and in 92 % of all companies, there are no labour disputes.<sup>6</sup>

#### **III. Basic Principles of the Labour Court Procedure**

The labour court procedure is a civil procedure. It follows the same principles as any other civil dispute in Germany. All proceedings are public. Generally, an oral hearing is held before the court enters a judgment (principle of an oral hearing). This judgment is based on the evidence that was presented by the parties in the case. The parties exercise sole control over legal proceedings (principle of party disposition). At any time, they have the opportunity to settle the dispute by withdrawal of the claim or conciliation. However, there are special proceedings where the inquisitorial principle applies: the court itself has to examine the facts of the case ex officio. This kind of procedure is, for example, used in disputes relating to the scope of works council's co-determination rights in a company.

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<sup>5</sup> Source Federal Statistical Office: „Ausgewählte Zahlen für die Rechtspflege“ Fachserie 10 Reihe 2.8, 2012.

<sup>6</sup> Grotmann-Höfling in Arbeit und Recht 2005, p. 398.

The notion of effective employee protection is reflected in the labour court procedure. Therefore, the Labour Courts Act stipulates specific procedural rules for labour court proceedings. These were established to meet the particularities of labour disputes. Special principles of labour jurisdiction are, for example, the priority of conciliation, the procedural equality of the parties, the minimisation of legal costs and the place of jurisdiction of the normal workplace.

## **1. Expedition of Labour Court Proceedings**

According to Section 9 of the Labour Courts Act, proceedings at all levels are to be expedited. This basic principle is supported by specific procedural regulations whereby the procedure is to be rationalised and simplified. For example, procedural time limits are shorter than those in civil proceedings.

The expedition of labour court proceedings is especially important for applications relating to dismissal: in these cases, the employee's livelihood is affected and a long duration of the proceedings would make a reintegration into working life more difficult. The German law on dismissals provides for continued employment of the employee if the dismissal is invalid. Therefore, a long duration of the proceedings would result in an increasing economic risk for the employer. If the Labour Court declares a dismissal invalid, the employee is entitled to compensation for loss of remuneration from the time of termination until reinstatement. For this reason, applications relating to dismissal are prioritised at first and second instance courts. The judge has to hold the first oral hearing within two weeks of filing the complaint. If a conciliation is not achieved at this hearing, the judge shall accelerate the proceedings by reducing the time limit for a written statement to as little as two weeks.

Statistics on labour disputes show that the principle of the expedition of labour court proceedings is applied effectively by the labour courts. In 2012, out of a total of 211,640 dismissal cases, 31,5 % (66,732) were completed within the first month and a further 39,7 % (83,990) lasted between one and three months. Within a year, 98,5 % of dismissal cases were completed.<sup>7</sup> At the Federal Labour Court, the average duration of proceedings relating to dismissal is also shorter than the duration of other proceedings.

## **2. Priority of Conciliation**

A compulsory first step of the labour court procedure is a preliminary conciliation hearing (according to Section 54 of the Labour Courts Act), which aims to reach an amicable settlement between the parties and thus to simplify and speed up litigation. The conciliation hearing is held by the judge without the lay members. Together with the parties involved, the judge explores the facts of the case and assesses the chances of the claim succeeding. In doing this, he or she must always adopt a neutral position and work towards a balanced settlement. There are no compulsory preliminary written proceedings.

The conciliation hearing in the labour court procedure is considered to be very important. Fundamentally, the employment relationship is supposed to be permanent and requires a close contractual relationship between the parties, which shall not be unduly strained. The priority of conciliation therefore meets the requirement of promoting conciliatory jurisdiction to a great extent. At the conciliation hearing, the judge tries to determine the underlying interests of the parties, to recognise the social background of the dispute and to point out the factual and legal risks. In doing this, he or she can often achieve a conciliation of the

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<sup>7</sup> Source Federal Statistical Office: „Ausgewählte Zahlen für die Rechtspflege“ Fachserie 10 Reihe 2.8, 2012.

parties and thus complete the case. Statistics show that a large number of preliminary conciliation hearings result in conciliation. In 2012, for example, 59 % of all cases (approximately 234,920) were settled through conciliation.<sup>8</sup> Even dismissal cases are often settled through conciliation resulting in the termination of the employment contract.

### **3. Minimisation of Legal Costs**

In Germany, first-instance labour court fees are far lower than those payable for civil matters heard at ordinary courts. No fees at all are payable for certain collective disputes. In addition to that, there are further provisions designed to reduce costs. For example, the claimant cannot be asked to pay an advance of court costs. Furthermore, parties are not required to be legally represented at first instance Labour Court hearings. They may either appear on their own behalf, or be represented by a lawyer, a representative of an employers' association or a trade union or any other authorised person. Parties are free to be represented by a lawyer of their own choice. However, a party's costs incurred for legal representation at first instance hearings cannot be recovered from the other party, even if the decision is made in their favour.

At second instance, there must be representation by lawyers, or union and employers' association representatives. At the Federal Labour Court, the parties must be represented by a person with a degree in laws. In contrast to appeals on points of law in ordinary jurisdiction, lawyers do not require a specific license to represent clients before the Federal Labour Court.

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<sup>8</sup> Source: Federal Ministry of Labour and Social Affairs: „Tätigkeit der Arbeitsgerichte (Deutschland) 2012“.

## **IV. Federal Labour Court**

### **1. Responsibilities of the Federal Labour Court**

#### *a) General Information*

The Federal Labour Court is a court of appeal dealing with appeals on points of law. Its task is to ensure legal uniformity by ruling on issues of fundamental legal significance and developing the law in areas left unregulated. It is generally bound by the factual findings of the courts of lower instance unless these findings are proven to have been made through a procedural irregularity. Generally, the Federal Labour Court does not re-examine the judgment in questions of fact, only in questions of law. If the lower court has not made an error in law, the revision is rejected. Otherwise, the judgment is set aside and the case is remitted to the Land Labour Court. Should the factual findings made by the Land Labour Court be sufficient to rule on the case, the Federal Labour Court itself enters a final judgment. Judgments by the Federal Labour Court are not subject to appeal, they have binding effect.

Although Labour Courts and Land Labour Courts are not bound by the judgments of the Federal Labour Court (with the exception of those cases remitted to them by the Federal Labour Court), these are very important for their daily work. Land Labour Courts are obliged to grant leave to appeal if their judgment deviates from a judgment given by the Federal Labour Court. This enables the Federal Labour Court to restore legal uniformity should an appeal on points of law be lodged.

In the area of employment law, the development of law by precedents is very important. This is due to the lack of regulations in some areas, such as the law relating to industrial action, which is largely left unregulated by legislation. Furthermore, the development of law by precedents is required where legislation has not yet or not completely regulated matters resulting from new social developments. In doing this, the court has to observe the provisions of the Basic Law and European legal requirements and shall not infringe the principle of the separation of powers.

#### *b) Appeals on Points of Law*

An appeal on points of law can be lodged against a Land Labour Court judgment with the Federal Labour Court, regardless of the value of the matter in dispute or the subject matter, if the Land Labour Court has granted leave to appeal. The Land Labour Court has to grant leave to appeal if a legal issue relevant to the decision of the case is of fundamental legal significance or if the judgment deviates from a judgment given by the Federal Constitutional Court, the Joint Senate of the Supreme Federal Courts or the Federal Labour Court. If the Federal Labour Court has not yet issued a judgment on a specific legal issue, leave to appeal has to be granted where the Land Labour Court's judgment deviates from a decision of another Land Labour Court. The Federal Labour Court is bound by the decision of the Land Labour Court to grant leave to appeal. It cannot refuse a case claiming the lack of legal significance or divergence of decisions.

### *c) Appeals against Denial of Leave to Appeal*

If the Land Labour Court does not grant leave to appeal, an “appeal against denial of leave to appeal” can be lodged. This can be based on the ground that the Land Labour Court has deviated from a decision of one of the above courts or that the case is of fundamental legal significance. Another ground for lodging an “appeal against denial of leave to appeal” is that the hearing was not held in accordance with the law, i.e. that a procedural irregularity has occurred or the judgment is based on grounds on which the parties concerned have not had an opportunity to present their comments. Should the Federal Labour Court allow an “appeal against denial of leave to appeal”, proceedings are continued as an appeal on a point of law. However, if the Federal Labour Court establishes that the hearing was not held in accordance with the law, the judgment is set aside and the case is remitted to the Land Labour Court. According to statistics, “appeals against denial of leave to appeal” have low chances of success. Out of a total number of 1,538 “appeals against denial of leave to appeal” completed in 2013, 5,7 % (88) were successful, compared to 6,5 % in 2012.

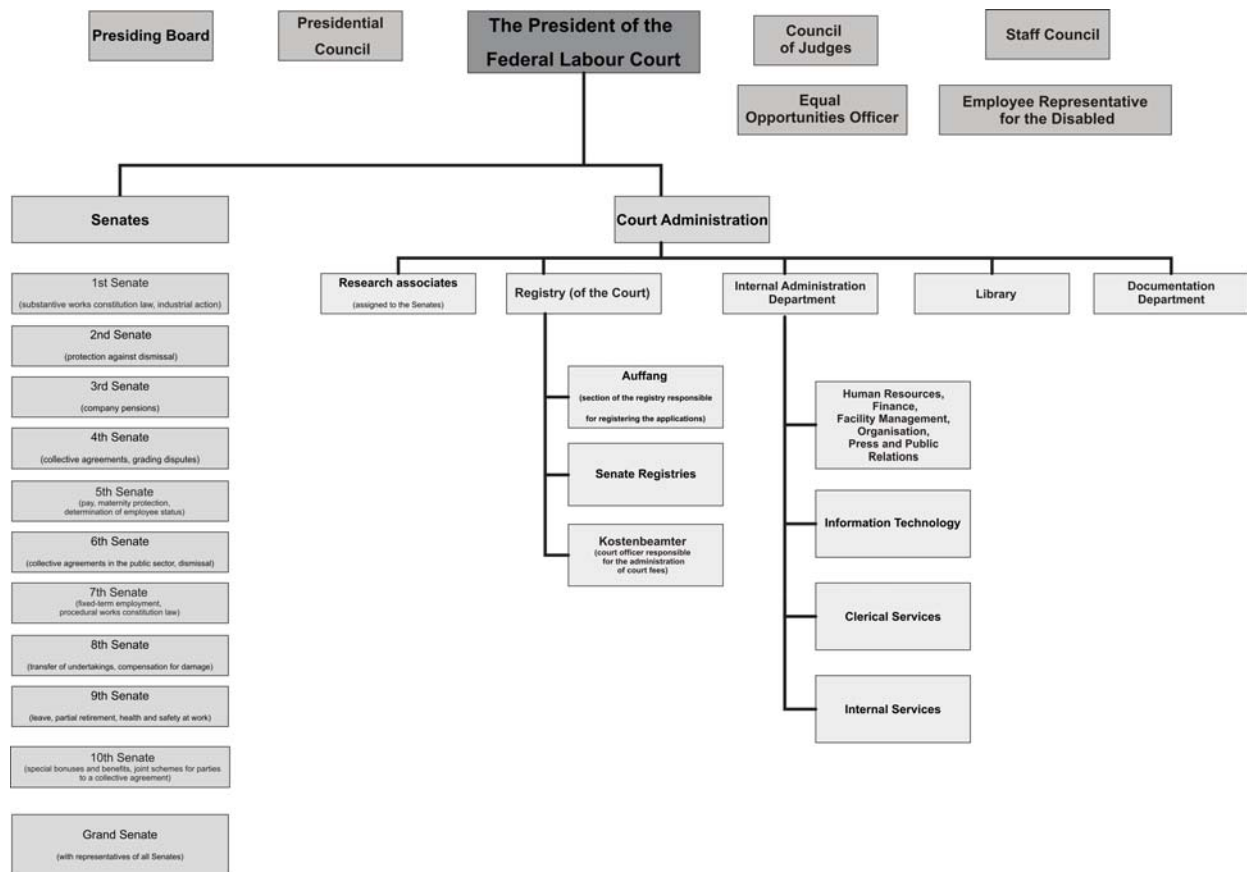
## **2. Structure of the Federal Labour Court**

At the Federal Labour Court, a total of 165 members of staff including 38 judges are employed. The President is the head of the Federal Labour Court. Although the Federal Minister of Labour and Social Affairs, in consultation with the Federal Minister of Justice, is accountable for the administration and supervision of the Federal Labour Court, these tasks are largely delegated to the President of the Federal Labour Court.



Jurisdiction is carried out by the Senates and the so-called Grand Senate. Committees and Boards of judges include the Presiding Board, the Presidential Council and the Council of Judges. The Presiding Board decides on the composition of the Senates and allocates court business to the Senates in advance of each year. It comprises the President and six further members elected by the judges. The Presidential Council enables the judges, for example, to voice their opinion on the election of “Judges at the Federal Labour Court”. It is chaired by the President and also comprises the President's permanent deputy, one member of the Presiding Board and two members elected by the judges. The purpose of the Council of Judges is to ensure their participation in general or social matters and to represent their interests to the court administration.

In order to conduct its business, the Federal Labour Court has staff to support the work of the judges. These include the research associates and members of staff working in the library and the documentation department. Additionally, the court needs human and material resources for running the registry and other service departments including information technology, clerical services, security and messenger services and printing services. The internal administration department is responsible for providing the Federal Labour Court with these resources and running its operations. The department administrates the Federal Labour Court's budget, which amounts to 16 million Euro per annum.



### **3. Allocation of Business**

The Presiding Board of the Federal Labour Court is responsible for the allocation of court business to the Senates and therefore sets up a schedule of responsibilities in advance of each year. According to the principle of the lawful judge, the allocation of court business to the Senates shall be based on general, abstract criteria. At the Federal Labour Court, the allocation of business has always been based on areas of law. If possible, the responsibilities of the Senates are retained beyond each year, which enables the Senates to deal with specific areas of law for a long period of time. This ensures legal uniformity and certainty. The complete schedule of responsibilities is published on the website of the Federal Labour Court.

The following areas of law have been assigned to the individual Senates as their main areas of responsibility:

- 1<sup>st</sup> Senate: substantive industrial constitution law and staff representation law, ecclesiastical staff representation, freedom of association, capacity to conclude collective agreements and collective bargaining competence as well as industrial action,
- 2<sup>nd</sup> Senate: termination of the employment relationship through dismissals and subsequent claims for redundancy payment and claims for continued employment, warnings, replacement of the approval procedure for dismissals,
- 3<sup>rd</sup> Senate: company pension and life insurance schemes including pension losses,

- 4<sup>th</sup> Senate: law on collective bargaining agreements and the application of collective bargaining agreements and their effect on the employment relationship, disputes on pay scale grouping,
- 5<sup>th</sup> Senate: remuneration entitlement including working hours, continued remuneration in case of incapacity, public holidays and maternity protection,
- 6<sup>th</sup> Senate: interpretation of collective agreements and service regulations of the civil service as well as collective bargaining agreements for the Allied Forces including the legal standards regardless of whether these are direct or are a result of the referral application, interpretation of collective bargaining agreements which bind companies constituted under civil law committed to keeping those large legal entities under public law, insolvency law, termination of the employment relationship other than by dismissal and subsequent claims for continued employment, termination of a professional training contract,
- 7<sup>th</sup> Senate: procedural industrial constitution and staff representation law, co-determination rights in personnel matters, termination of temporary employment contracts and claims for continued employment as well as claims for establishment of employment,
- 8<sup>th</sup> Senate: damages, transfer of undertakings and the associated terminations as well as claims for continued employment or reinstatement, severance payment, compensation, contractual penalties and all other disputes than cannot be allocated to any other senate,
- 9<sup>th</sup> Senate: annual leave, study leave and special leave, parental leave, leave pay, early and partial retirement, references, occupational health, and complaints against employee

selection decisions in the public sector, employee inventions, and laws governing severe disability, vocational training,

- 10<sup>th</sup> Senate: bonuses, stock options and special benefits, extra allowance, hardship allowance, result-oriented bonuses and target agreements, competition law, laws concerning commercial agents and enforcement of judgments, the obligation to work and the obligation of the employer to give employees work, determination of employee status.

#### **4. Judges of the Federal Labour Court**

##### *a) Composition of the Senates*

Each Senate of the Federal Labour Court consists of the Chair, the judges and the lay members. In addition to the chair, two or, in some cases, three judges and approximately 20 lay members are allocated to each Senate. Lay members are drawn from the ranks of employers and employees in equal numbers. The allocation of the judges and lay members to the Senates is specified in the schedule of responsibilities, which is adopted by the Presiding Board in advance of each year. Within the year, the schedule of responsibilities can only be changed for particular reasons, such as the election of a new judge or the retirement of a judge.

The Senate is constituted by the Chair, two further judges and two lay members representing the employers' and employees' sides respectively. For each Senate, a list of lay members is drawn in advance of each year laying down the order in which the lay members are invited to the court sittings. Senates staffed with more than three judges including the chair determine an abstract rule according to which the judges participate in

the hearings. This is necessary to ensure that the composition of the court is always certain and the principle of the lawful judge is maintained. The judges allocate business within the Senate and determine the reporting judge for each case.

Certain decisions taken by the judges without an oral hearing, such as the rejection of an appeal on points of law due to procedural irregularities (e. g. failure to observe the time-limit), do not require the involvement of lay members in the decision-making process. The Chair of the Senate is responsible for directing the course of the proceedings and chairing the hearings.

Like all other supreme courts, the Federal Labour Court has a Grand Senate. It comprises one judge from each of the Senates including the President of the Federal Labour Court as well as three lay members representing the employers' side and three lay members representing the employees' side. The Grand Senate has jurisdiction when a Senate plans to deviate from a previous ruling by another Senate or by the Grand Senate. Additionally, on request of a Senate, the Grand Senate decides on matters of fundamental legal significance if, in the Senate's view, it is necessary to further develop the law or to ensure the consistency of court decisions.

#### *b) Judges*

The Judges of the Federal Labour Court are appointed for life. At the time of appointment, they must be at least 35 years of age and be qualified to hold judicial office. Judges are chosen jointly by the Federal Minister of Labour and Social Affairs, in consultation with the Federal Minister of Justice, and a committee for the selection of judges consisting of the competent Land ministers and an equal number of members

elected by parliament. The judges are then appointed as "Judges at the Federal Labour Court" by the Federal President. The meetings of the committee for the selection of judges are not public. The Federal Minister of Labour and Social Affairs chairs the meetings, she does not, however, have a vote.

The vacancies for federal judges are not advertised and it is not possible to apply for these posts. Instead, the Federal Minister of Labour and Social Affairs and each member of the committee for the selection of judges is entitled to make recommendations. The Presiding Board of the Federal Labour Court makes a statement on the personal and professional suitability of the proposed judges. The committee for the selection of judges is not bound by this statement, but it has to assess whether these judges are personally and professionally suitable for the office of a federal judge. The judges are selected by majority vote in closed ballot. If the Federal Minister of Labour and Social Affairs, in consultation with the Federal Minister of Justice, agrees to the election, she requests the Federal President to appoint the elected judge.

The presiding judges of the Federal Labour Court are appointed by the Federal President on recommendation of the Federal Minister of Labour and Social Affairs and in consultation with the Presiding Board of the Federal Labour Court without further election.



The Judges of the Federal Labour Court (2014)

*c) Lay Members*

Lay members are appointed by the Federal Ministry of Labour and Social Affairs for 5 years. They can be re-appointed. Lay members must be at least 35 years of age and must have good knowledge and experience of employment issues and employment law. They should have a minimum of 5 years experience of working as lay members at a Labour Court or Land Labour Court and they should have worked in the capacity of an employer or an employee respectively for a certain time. Lay members are appointed on the basis of recommendations by trade unions and employer associations. The selection of lay members takes account of the importance of the body recommending them and provides for fair consideration of minorities.



#### *d) Legal Status of Judges and Lay Members*

According to the Basic Law, both the judges and lay members are independent and subject only to the law. Their judicial work is not subject to the orders of the executive. Judges of the Federal Labour Court may be involuntarily dismissed or transferred only by virtue of judicial decision. Their compulsory retirement age is between 65 und 67 depending of the year of birth. Lay members may be removed from office before the expiration of their term of office only for the reasons and in the manner specified by the laws. Removal from office is, for example, necessary, if a lay member representing the employees' side takes on a position that qualifies as an employer. Cases of removal from office are decided by the Senate specified in the annual schedule of responsibilities.

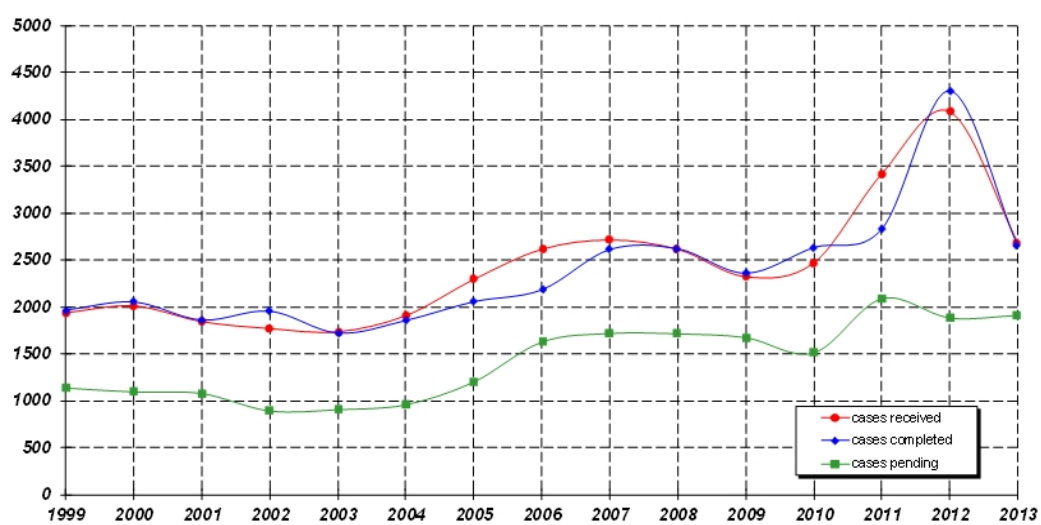
### **5. Research Associates**

The Senates are assisted by research associates, qualified junior staff from the judiciary of the 16 Länder, who are usually seconded to the Federal Labour Court for two years. Their main task is to prepare judgments. Their recommendations do not only support the work of the reporting judge, they also serve as the basis for preparing, discussing and deciding the case in the Senate. The research associates regularly take part in the preliminary conferences of the judges of the Senate, and the Chair may allow them to observe the deliberation and voting of the Senate. This gives them the opportunity to further develop their knowledge of employment and procedural law and to familiarise themselves with the work of a court of appeal.

## **6. Workload and Length of Proceedings**

In 2013 a total of 2,684 cases were received (compared to 4,082 cases in the preceding year), among them 1,094 appeals on points of law (compared to 1,209 in 2012) and 1,481 appeals against denial of leave to appeal (compared to 2,737 in 2012). At the same time 2,650 cases were completed in 2013, a decline of 1,654 cases from the preceding year. The average length of proceedings at the Federal Labour Court was 8 months. Mainly cases relating to the continuity of employment, such as disputes on dismissal and fixed-term employment constitute the largest part of workload. In 2013 they amounted to 32,68 % of cases received by the Federal Labour Court. Furthermore the Federal Labour Court received cases of collective agreements and their interpretation (13,75 %), cases of payment for work done (13,04 %), cases relating to company pensions and partial retirement (8,31 %) and cases of works constitution (4,58 %). A further 27.64 % of cases was related to other employment issues. The following charts show the development of workload of the Federal Labour Court and the breakdown of cases by area of law:

*development of the workload of the Federal Labour Court*



***Development of the workload of the Federal Labour Court in 2013***  
***Breakdown of cases by Area of Law***

	<b>Received</b>	<b>Cases Completed</b>	<b>Pending</b>
Termination of contracts of employment (by dismissal, fixed-term employment; without dismissals following transfers of undertakings)	32,68 % (877)	25,62 % (679)	31,29 % (598)
Collective agreements and their interpretation	13,75 % (369)	11,58 % (307)	19,57 % (374)
Payment for work done	13,04 % (350)	15,40 % (408)	10,26 % (196)
Company pension (including early retirement) and partial retirement	8,31 % (223)	13,36 % (354)	10,47 % (200)
Works constitution and employee representation	4,58 % (123)	7,66 % (203)	5,44 % (104)
Other	27,64 % (742)	26,38 % (699)	22,97 % (439)

## **V. The Building of the Federal Labour Court**

The new building of the Federal Labour Court is situated on the Petersberg in Erfurt close to the historic citadel. It is set in a park, which surrounds the rigorously shaped building on a site of 35,000 square metres. The park is open to the public and was landscaped by Dieter Kienast, a landscape architect from Zurich. With the design of the four-storey building measuring 92 metres by 44 metres, the Berlin architect Gesine Weinmiller won the architectural competition, which had invited architectural design tenders from all over Europe. With a floor space of 7,833 square metres, the building accommodates workplaces for approximately 200 staff, a library of 1,700 square metres, 4 court rooms, 3 conference and meeting rooms and a staff restaurant. The foyer can be used as a conference venue for up to 400 people.



The façade of the building is structured in alternating floor-to-ceiling windows and slate elements. The windows can be covered by sliding glass shutters, which show the first, slightly shortened sentence of the Basic Law:

“Human dignity shall be inviolable. To protect it shall be the duty of all state authority.”



In accordance with a government policy for new public buildings, 2 % of the capital development costs were allocated to public art. Art is exhibited in all parts of the building, but especially in those which are open to the public.

In 2010, a photovoltaic system was installed on the roof of the court building. The system generates about 55,000 kWh per year.



Large Court Room

## **VI. Library and Documentation Department**

Since the foundation of the Federal Labour Court in 1954, its library has become the largest employment law library in Germany. The library's emphasis is on employment law, social, civil and procedural law, general and legal reference books, law gazettes, parliamentary documents, collective agreements and law reports. Starting with 3,000 book and magazine volumes in 1954, the library has increased its stock to 92,000 volumes in 2013. This stock now increases by about 1,800 volumes each year. The library holds 305 current periodicals, 9 newspapers, numerous CD-ROMs, 6,500 microfiches and 81,000 collective agreements. With a total floor space of 1,700 square metres, the library has 31 seats for readers and

4.5 kilometres of shelving. The books are sorted according to the Federal Labour Court's own classification and they are freely accessible. All books and media are recorded in an online catalogue (OPAC), available on the website of the Federal Labour Court. Additionally, all magazines are listed in the catalogue of serials (Zeitschriftendatenbank).

The library primarily supports the work of the Federal Labour Court. At any time, judges and other staff may use the library and borrow books. External users may visit the library during the opening hours only. In 2013, the library was visited by about 560 external users.

Since 1975, the Federal Labour Court has been participating in the documentation for the electronic legal information system JURIS. The department documents decisions relating to employment law taken by the Federal Labour Court, the Land Labour Courts, the Labour Courts, arbitration panels, churchly labour courts and supranational courts in cases related to employment law, relevant literature in law journals, yearbooks etc., commemorative publications and collections, doctoral and postdoctoral theses and administrative regulations related to employment law.

The documentation department analyses constantly relevant periodicals (e.g. journals, collected editions, law gazettes and parliamentary documents). The department receives judgements from the Labour Courts and Land Labour Courts. The so edited files are posted in an internal data base and in several data bases of the electronic legal information system JURIS. JURIS can be used from public institutions and private users equally.

At the end of 2013, the JURIS data base contained approximately 4,5 Mio documents. 500,000 documents are related to employment law. More than 135,000 documents were provided by the documentation department of the Federal Labour Court.



## **VII. Press and Public Relations**

In order to meet the legitimate public interest in the work of the Federal Labour Court, a press office was set up at the court. The press office gives a quarterly preview of the cases, which the Federal Labour Court will be hearing and which are of special interest due to the subject matter or the relevant question of law. Following the announcement of the judgment, the press office issues a press release. The press office is also first point of contact for the media. At the annual press conference, the President of the Federal Labour Court informs the media about the developments and the key judgments of the past year and gives a preview of future workload and interesting cases to be heard in the coming months. Further press conferences take place as and when required.

General information on the Federal Labour Court and all press releases of the previous years are available on the website of the Federal Labour Court at <http://www.bundesarbeitsgericht.de>. Full (anonymised) judgments are available online without charge. They remain on the website for the duration of four years. Additionally, the press releases can be automatically subscribed over a newsfeed (RSS).

The Federal Labour Court regularly receives groups of visitors - such as students, trainee lawyers, works and staff council representatives and managers - who would like to learn about the work, the responsibilities and the structure of the Federal Labour Court. In 2013, 161 groups visited the Federal Labour Court.

The court is also visited by foreign delegations taking part in discussions with the judges to get to know the German system of labour courts and the Federal Labour Court.